

support site selections. District engineers should address site selection factors in the NEPA document. District engineers will consider the criteria of 40 CFR parts 227 and 228 when selecting ocean disposal sites, as well as other technical and economic considerations. Emphasis will be placed on evaluation to determine the need for ocean disposal and other available alternatives. Each alternative should be fully considered on an equal basis, including the no dredging option.

(5) If the regional administrator advises the district engineer that a proposed ocean disposal site or activity will not comply with the criteria, the district engineer should proceed as follows.

(i) The district engineer should determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate the engineering and economic feasibility and environmental acceptability of the alternative sites.

(ii) If the district engineer makes a determination that there is no economically feasible alternative method or site available, he will so advise the regional administrator of his intent to proceed with the proposed action setting forth his reasons for such determination.

(iii) If the regional administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by section 103(c) of the ODA to prohibit use of a proposed disposal site, the case will be forwarded through the respective Division office and CECW-D to the Secretary of the Army or his designee for further coordination with the Administrator of EPA and final resolution. The report forwarding the case should be in the format described in § 337.8 of this chapter.

(iv) The Secretary of the Army or his designee will evaluate the proposed project and make a final determination on the proposed disposal. If the decision of the Secretary of the Army or his designee is that ocean disposal at the proposed site is required because of the unavailability of economically fea-

sible alternatives, he will seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with section 103(d) of the ODA.

PART 337—PRACTICE AND PROCEDURE

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AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14916, Apr. 26, 1988, unless otherwise noted.

§ 337.0 Purpose.

The practices and procedures part of this regulation apply to all Corps operations and maintenance activities involving the discharge of dredged or fill material in waters of the U.S. and ocean waters and related activities of local interests accomplished to ensure continued functions of constructed Corps projects.

§ 337.1 Public notice.

Presently, public notification of proposed discharges of dredged or fill material is required by the provisions of section 103 of the ODA and sections 401 and 404 of the CWA. District engineers are encouraged to develop procedures to avoid unnecessary duplication of state agency procedures. Joint public notification procedures should be a primary factor in the development of Memoranda of Agreement with the states as described in § 337.4.

(a) With the possible exception of emergency actions as discussed in § 337.7, the district engineer should issue a public notice for projects involving the discharge of dredged or fill material into waters of the U.S. or ocean waters unless the project is authorized by a general permit. Public

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notices for Corps operation and maintenance activities are normally issued for an indefinite period of time and are not reissued unless changes in the disposal plan warrant re-evaluation under section 404 of the CWA or section 103 of the ODA. The public notice is the primary method of advising all interested parties of Federal projects and of soliciting comments and information necessary to evaluate the probable impact of the discharge of dredged or fill material into waters of the U.S. or ocean waters. The notice should, therefore, include sufficient information to provide a clear understanding of the nature of the activity and related activities of local interests in order to generate meaningful comments. A single public notice may be used for more than one project in appropriate cases. The notice normally should include the following items:

- (1) The name and location of the project and proposed disposal site.
- (2) A general description of the project and a description of the estimated type, composition, and quantity of materials to be discharged, the proposed time schedule for the dredging activity, and the types of equipment and methods of dredging and conveyance proposed to be used.
- (3) A sketch showing the location of the project, including depth of water in the area and all proposed discharge sites.
- (4) The nature, estimated amount, and frequency of known and anticipated related dredging and discharge to be conducted by others.
- (5) A list of Federal, state, and local environmental agencies with whom the activity is being coordinated.
- (6) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.
- (7) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any.
- (8) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing except in emergency situations where the procedures of § 337.7 will be followed, within which interested parties may ex-

press their views concerning the proposed project.

(9) If the proposed Federal project would occur in the territorial seas or ocean waters, a description of the project's relationship to the baseline from which the territorial sea is measured.

(10) A statement on the status of state water quality certification under section 401 of the CWA.

(11) For activities requiring a determination of consistency with an approved state coastal zone management plan, the following information will be included in the notice:

(i) A statement on whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the state management program.

(ii) Sufficient information to support the consistency determination to include associated facilities and their coastal zone effect.

(iii) Data and supporting information commensurate with the expected effects of the activity on the coastal zone.

(12) A statement on historic resources, state of present knowledge, likelihood of damage or other adverse effect on such resources, etc.

(13) A statement on endangered species.

(14) A statement on evaluation factors to be considered, adapted from that presented at 33 CFR 325.3(b).

(15) The name, address, and telephone number of the Corps employee from whom additional information concerning the project may be obtained.

(16) The signature of the district engineer or his designee on all maintenance dredged material disposal public notices.

(17) For activities regulated under section 103 of the ODA, the following additional information should be integrated into the public notice:

(i) A statement on the designation status of the disposal site.

(ii) If the proposed disposal site is not a designated site, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible.

(iii) A brief description of known dredged material discharges at the proposed disposal site.

(iv) Existence and documented effects of other authorized disposals that have been made at the disposal area.

(v) An estimated length of time during which disposal would continue at the proposed site.

(vi) Information on the characteristics and composition of the dredged material, and the following paragraph:

The proposed transportation of this dredged material for disposing of it in ocean waters is being evaluated to determine that the proposed disposal will not unreasonably degrade or endanger human health, welfare, or amenities or the marine environment, ecological systems, or economic potentialities. In making this determination, the criteria established by the Administrator, EPA pursuant to section 102(a) of the ODA, will be applied. In addition, based upon an evaluation of the potential effect which the failure to utilize this ocean disposal site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, an independent determination will be made of the need to dispose of the dredged material in ocean waters, other possible methods of disposal, and other appropriate locations.

(b) The following statement should be included in the public notices:

Any person who has an interest which may be affected by the disposal of this dredged material may request a public hearing. The request must be submitted in writing to the district engineer within the comment period of this notice and must clearly set forth the interest which may be affected and the manner in which the interest may be affected by this activity.

(c) Public notices should be distributed as described in 33 CFR 325.3(c). In addition, public notices should be sent to CECW-D, Office of the Chief of Engineers, Washington, DC 20314, if the project involves the discharge of dredged material in waters of the U.S. or ocean waters. District engineers should also develop, as appropriate, regional mailing lists for Corps maintenance dredging and disposal activities to the extent that property owners adjacent to the navigation channel and disposal area are notified of the proposed activity. In order to effect compliance with Executive Order 12372, district engineers should provide copies of

public notices to concerned state and local elected officials.

(d) The district engineer should consider all comments received in response to the public notice in his subsequent actions. All comments expressing objections to or raising questions about the project should be acknowledged. Comments received as form letters or petitions, however, may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments are received which relate to matters within the special expertise of another agency, the district engineer may seek the advice of that agency. The receipt of comments as a result of the public notice normally should not extend beyond the stated comment period; however, at his discretion, the district engineer may provide an extension.

(e) Notices sent to several agencies within the same state may result in conflicting comments from those agencies. Many states have designated a state agency or individual to provide a single and coordinated state position regarding Federal activities. Where a state has not so designated a single source, the district engineer, as appropriate, may seek from the Governor an expression of his views and desires concerning the proposed and subsequent similar projects.

(f) All comments received from the public notice coordination should be considered in the public interest review process. Comments received from Federal or state agencies which are within the area of expertise of another agency will be communicated with that other agency if the district engineer needs the information to make a final determination on the proposed project.

§ 337.2 State requirements.

The procedures of this section should be followed in implementing state requirements.

(a) District engineers should cooperate to the maximum extent practicable with state agencies to prevent violation of Federally approved state water quality standards and to achieve consistency to the maximum degree practicable with an approved coastal zone management program.